Supreme Court, U.S.
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No. ___

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

THE PEOPLE OF THE STATE OF NEW YORK,

Petitioner,

vs.

CLIVE SPENCER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI

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April 13, 1995

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QUESTION PRESENTED

Whether the police acted reasonably when they stopped an automobile solely to ask the driver the location of an armed violent felony suspect, who had been seen in the immediate vicinity several minutes earlier, where the officer had reasonable cause to believe that the suspect's whereabouts were known to the driver of the automobile.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The People of the State of New York petition this Court for a writ of *certiorari* to review a judgment of the Court of Appeals for the State of New York dated January 17, 1995.

By a four-to-three decision, the New York Court of Appeals reversed a unanimous decision of the Appellate Division of the New York State Supreme Court, Second Department, and held that the police had violated the Fourth Amendment to the United States Constitution when they stopped an automobile to ask the driver if he knew the whereabouts of an armed violent felony suspect, who had been seen in the area by the crime victim minutes before, but could no longer be

found, and who was known to be the driver's good friend. The court ordered that defendant's motion to suppress a firearm and drugs, which were seen inside his automobile in plain view and seized, be granted and that the indictment, charging defendant with possession of the firearm and drugs, be dismissed. *People v. Spencer*, 84 N.Y.2d 479, 622 N.Y.S.2d 483 (1995) (*see* Appendix at 1-19).

Prior to that ruling, the Appellate Division for the Second Department, New York's intermediate appellate court, had affirmed defendant's judgment of conviction and the trial court's ruling denying suppression. *People v. Spencer*, 193 A.D.2d 90, 602 N.Y.S.2d 412 (2d Dep't 1993) (*see* Appendix at 20-27). The Appellate Division held that the police officers' action in stopping the defendant's automobile for the sole purpose of requesting information about the felony suspect was reasonable and lawful under the circumstances, given the minimal level of the intrusion, the nature of the crimes involved and the fact that the stop was not arbitrary, but rather, was based directly on information supplied by the victim, who was in the police car.

By Memorandum and Order dated October 9, 1990, a justice of the Supreme Court of the State of New York, Kings County, had found the stop reasonable and permissible and noted that, in this case, there were no less intrusive means of inquiry available. *People v. Spencer*, Kings County Indictment Number 6901/89 (N.Y. Sup. Ct. Kings Co. Mem. & Order Oct. 9, 1990) (*see* Appendix at 28-33). Following the ensuing jury trial, defendant was found guilty of one count of Criminal Possession of a Weapon in the Third Degree (N.Y. Penal Law § 265.02[4]), and one count of Criminal Possession of Marihuana in the Fourth Degree (N.Y. Penal Law § 221.15). On January 31, 1991, the Supreme Court, Kings County, entered a judgment of conviction and sentenced

defendant, as a second felony offender, to concurrent terms of imprisonment of three to six years on the criminal possession of a weapon count and one year on the criminal possession of marijuana count.

JURISDICTIONAL STATEMENT

The judgment of the New York Court of Appeals was entered on January 17, 1995. This petition is filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .

UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT

No State shall . . . deprive any person of life, liberty or property without due process of law . . . .

STATEMENT OF THE CASE

The Pretrial Suppression Hearing

On May 16, 1989, at approximately 4:00 a.m., Dion Bloomfield assaulted his girlfriend, KALIMA ALAMIN, striking her in the mouth with a gun, fracturing a tooth and opening a cut in her lip (Police Officer EDWARD ALONGE: 6, 16-18, 20; Police Officer DONALD CONCEICAO: 53;

Kalima Alamin: 109-111, 119, 121).[1] Alamin, along with her mother, promptly reported the crime to the police. She was told to call the police as soon as she saw Bloomfield and that they would respond to arrest him (Alamin: 119-20).

The next night, May 17, 1990, Alamin saw Bloomfield at a "jerk chicken" restaurant and called the police (Alamin: 109, 120). At approximately 11:20 p.m., Officers Alonge and Conceicao, who were driving in the area in a marked police car, received the call and responded, meeting Alamin nearby (Alonge: 5-6, 16; Conceicao: 53). Alamin got into the backseat of the patrol car and the officers drove her around the neighborhood, looking for Bloomfield (Alonge: 5-6, 19-21; Conceicao: 54, 103-04; Alamin: 110-11, 119-22).

They searched the neighborhood for at least five minutes without locating Bloomfield. Then, as they approached the Turntable Lounge on Rogers Avenue, Alamin spotted defendant, Clive Spencer, in front of "Jerk Chicken," a fast-food restaurant. Spencer was seated in his white car, which was double-parked (Alonge: 5-8, 18, 36-37; Conceicao: 54-58, 103-04; Alamin: 110-111, 122). Alamin told the officers that defendant might know where to find Bloomfield, adding, "That's Dion's friend. If he's around, then Dion should be around" (Alonge: 6-7, 18, 36-37, 40-41; Conceicao: 54, 56; Alamin: 110-11, 123-24). Before the officers had an

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[1] On September 14 and 17, 1990, a pretrial hearing was held on defendant's motion to suppress the weapon and marijuana recovered from his automobile. Three witnesses testified at the hearing: Police Officers Alonge and Conceicao, and Kalima Alamin. Officer Alonge testified for the prosecution and Officer Conceicao and Ms. Alamin for the defense. Their testimony is summarized together. The numbers in parentheses refer to the page numbers of the hearing transcript cited. The names refer to the witnesses whose testimony is cited.

opportunity to pull alongside defendant's car to inquire if defendant knew where Bloomfield was, defendant started his car and pulled away, turning left onto Linden Boulevard (Alonge: 22-23, 37).[2]

Officer Alonge, driving the police car, followed defendant and turned left onto Linden Boulevard (Alonge: 5, 23; Conceicao: 56-57). Officer Alonge turned on the turret lights and used the horn to signal defendant to pull over (Alonge: 7-8, 22-23; Conceicao: 57-58). Defendant responded and pulled over about one block further down Linden Boulevard, near the corner of Bedford Avenue (Alonge: 8, 22-23; Conceicao: 58, 104). The officers then told Alamin, who did not want Bloomfield's friend, defendant, to observe her with the police, to "scooch down" to prevent her from being seen by defendant (Alonge: 38-39; Conceicao: 103; Alamin: 111, 124-25).

The officers stopped the police car behind defendant's car, got out, leaving Alamin in the back seat, and walked toward defendant's car, intending merely to ask defendant if he knew of Bloomfield's whereabouts (Alonge: 7-8, 24; Conceicao: 59). With only their flashlights out -- their guns remained in their holsters -- Officer Alonge approached defendant's car on the driver's side and Officer Conceicao approached on the passenger's side (Alonge: 8-9, 27, 40, 54; Conceicao: 59; Alamin: 112-23, 128-29). As they neared the car, the officers noticed a woman in the passenger's seat (Alonge: 9, 23; Conceicao: 59). The officers shined their flashlights into the defendant's car. Immediately, before they had the opportunity to ask defendant any questions, they saw a clear plastic bag of

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[2] Alamin recalled that they drove for approximately thirty minutes or more before she saw defendant. She also recalled that they drove around the block one more time after they first observed defendant (Alamin: 111, 122).

marihuana on the floor near the woman's feet (Alonge: 9-10, 24-32; Conceicao: 59-64).

Officer Alonge directed defendant and the woman to get out of the car and walk to its rear to be placed under arrest (Alonge: 10-12, 24-25; Conceicao: 65; Alamin: 112, 134). As defendant left the car, Officer Alonge observed the butt of a revolver protruding from under the driver's seat (Alonge: 11, 34, 48-49; Conceicao: 101-02). Officer Conceicao handcuffed defendant and placed him under arrest (Alonge: 12, 39). Officer Alonge returned to defendant's automobile and retrieved the revolver and marijuana (Alonge: 12-13, 39; Conceicao: 101-02). Defendant told the officers that he was married, that the woman was his girlfriend, and that she had nothing to do with the revolver or marijuana (Alonge: 33, 48; Conceicao: 101). The woman was allowed to leave (Alonge: 33, 47-48; Conceicao: 112, 129).

The Arguments of Counsel

Defense counsel argued, *inter alia*, that the stop and subsequent search of defendant's car were illegal and that the gun and drugs recovered should be suppressed as the fruit of the unlawful stop (146, 149-50).

The prosecutor argued that the police officers lawfully and justifiably stopped defendant's vehicle to ask defendant if he knew where to find Bloomfield, Alamin's assailant. She stated that there was no suspicion of criminal activity or a traffic violation concerning defendant and, accordingly, the police approached the car solely with their flashlights on. This was normal procedure for a car stop at night, enabling the officers to see who they were speaking with and maintain their safety. The prosecutor argued that the marijuana and the gun were then discovered in plain view and incident to a lawful arrest (163-176).

The Decision of the Hearing Court

In a memorandum decision and order dated October 9, 1990, the court denied defendant's motion to suppress the revolver and marijuana (A.28-33). The court credited the testimony of the police officers. It held that the police action was justified at its inception: the police had an "articulable reason" for approaching defendant -- the police were seeking information as to the whereabouts of Bloomfield -- and the police were obligated to investigate Alamin's complaint (A.30, 32). Moreover, it held that the ensuing stop of defendant's car "was reasonably related in scope to the circumstance which rendered its initiation permissible" (A.30-31). The court stated that although "[o]rdinarily, the police are not authorized to stop a vehicle moving on a highway in the absence of circumstances suggesting criminality on the part of the occupants. . . . [u]nder these circumstances, common sense demand[ed] that they be permitted to stop it" (A.30-31) (citation omitted). The court held that the minimal intrusion, the lack of force, and the articulable reason for stopping defendant clearly rendered the police behavior lawful (A.30-31). The court also held that the use of flashlights by the officers at night was not an unreasonable intrusion; that once they observed the marijuana in plain view, the officers had probable cause to arrest defendant; and, that because the revolver was in plain view, the police seizure of the gun was also lawful (A.31-32). Finally, the hearing court held that "the police action was reasonably related at every stage to the degree of knowledge and credible belief possessed by the police officers" (A.32).

The State Appeals[3]

The Appellate Division, Second Department, of the Supreme Court of the State of New York, affirmed defendant's judgment of conviction. *People v. Spencer*, 193 A.D.2d 90, 602 N.Y.S.2d 412 (2d Dep't 1993). Justice Thomas Sullivan, writing for a unanimous court, concluded that under the circumstances of this case, the police had acted reasonably when they stopped defendant's car to request information relating to the whereabouts of Dion Bloomfield, an individual being sought for assault and criminal possession of a weapon. 193 A.D.2d at 95-96, 602 N.Y.S.2d at 415-16 (A.26). The Appellate Division rejected as "unduly restrictive," defendant's contention that, absent reasonable suspicion of criminal activity, the police may not stop a car except to enforce traffic and automobile regulations. *Spencer*, 193 A.D.2d at 94, 602 N.Y.S.2d at 415 (A.24). Applying the balancing test in *People v. John BB.*, 56 N.Y.2d 482, 487, 438 N.E.2d 864, 867, 453 N.Y.S.2d 158, 161, *cert. denied*, 459 U.S. 1010 (1982) -- a case which upheld a stop unrelated to roadway safety and unsupported by reasonable suspicion -- the Appellate Division held that the state's interest in learning Bloomfield's location so as to effect an arrest "more than counterbalanced the defendant's interest in being free from governmental interference." *Spencer*, 193 A.D.2d at 96, 602 N.Y.S.2d at 416 (A.24-27).

In an order dated January 31, 1994, Associate Judge Vito J. Titone granted leave to appeal to the New York Court of

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[3] Defendant raised no issue relating to the trial before the New York Court of Appeals and petitioner here raises no issue concerning defendant's trial. Accordingly, petitioner has not included a summary of the trial evidence in its petition to this Court.

Appeals. *People v. Spencer*, 82 N.Y.2d 931, 632 N.E.2d 493, 610 N.Y.S.2d 183 (1994).

A divided Court of Appeals reversed the order of the Appellate Division, granted defendant's motion to suppress the gun and drugs, and ordered that the indictment be dismissed. *People v. Spencer*, 84 N.Y.S. 749, 622 N.Y.S.2d 483 (1995). The four-judge majority held that the stop of defendant's car was unreasonable under the fourth amendment. *Id.* at 751, 622 N.Y.S.2d at 484 (A.1). The court stated that informational stops of automobiles are only permitted at uniform, nonarbitrary, roving roadblocks, where all vehicles are stopped; or, to enforce traffic regulations; or where there exists at least a reasonable suspicion that the driver or occupants of the automobile had committed, were committing, or were about to commit a crime. *Id.* at 752-53, 622 N.Y.S.2d at 485-86 (A.3).

Having set these narrow boundaries for determining whether a particular car stop was reasonable, the court nevertheless proceeded to apply a balancing test measuring the effectiveness of the police procedure in promoting the stated governmental interest against the degree of intrusion, both in terms of its subjective effect and the degree of discretion vested in the officers. *Id.* at 754-55, 622 N.Y.S.2d at 486-87 (A.5-6). The court, citing this Court's opinion in *United States v. Hensley*, 469 U.S. 221, 228 (1985), held that while the governmental interest in the detection of past criminal conduct -- which was how it characterized this case -- was undoubtedly significant, it was not as important as the investigation of ongoing, recent or future criminal activity. *Id.* (A.5-7). The court held that while the police lawfully could have approached defendant on the street or pulled alongside his vehicle while it was stopped to ask defendant about Bloomfield's location, once the vehicle was in motion, the situation changed and other less intrusive means of locating

and apprehending the suspect should have been employed. *Id.* at 753, 622 N.Y.S.2d at 486 (A.4, 9). The court never specified what those alternatives were. The court then added the possibility that if there existed some type of ongoing criminal activity presenting an imminent threat to public safety, the police might justifiably stop a person's vehicle to "freeze" the situation. *Id.* at 756-57, 622 N.Y.S.2d at 488 (A.8).

The court also found the stop unreasonable because, unlike the "roving roadblock" at which all vehicles were stopped, the stop in this case "evidences a complete lack of objective standards circumscribing the exercise of discretion by the individual officers involved in making the stop." *Id.* at 758, 622 N.Y.S.2d at 489 (A.10-11).

The three-judge dissent found that the police officers' "straightforward, restrained response to the direct, immediate information obtained from the victim" was not an unreasonable seizure under the fourth amendment. *Id.* at 760, 622 N.Y.S.2d at 490 (A.12). The dissent also cited *United States v. Hensley*, 469 U.S. at 229, as support for its determination that the governmental interest at stake in this case was far more compelling than the majority acknowledged and at least as significant as in the investigation of ongoing crimes. *Id.* at 761-62, 622 N.Y.S.2d at 491 (A.14-15). It found that not only did there exist an interest in the detection of a past crime, but also that the government had a strong preventative interest in locating Alamin's assailant who still probably possessed a gun, had demonstrated a particularized personal hostility toward the victim, Alamin, and who could easily return. *Id.* at 762, 622 N.Y.S.2d at 491 (A.15). Furthermore, it was imperative that the police act promptly in order to obtain fresh information concerning the suspect's immediate whereabouts, rather than wait to obtain that information from defendant by some other means, at a time when it would likely have no

value. *Id.* (A.15-16). Finally, the dissent found that the police action in this case was minimally intrusive, that it was not arbitrary and that there existed no less intrusive alternatives available, such as continued observation of defendant. *Id.* at 763, 622 N.Y.S.2d at 491-92 (A.16).

REASONS WHY THIS COURT SHOULD GRANT THE WRIT

The Circumstances Under Which It Is Reasonable For A Police Officer To Stop An Automobile Containing Either Witnesses To Crimes Or Persons Who Could Provide Valuable Assistance In The Prevention Of Crimes And Apprehension Of Suspects Raises A Question Of Great Constitutional Importance Which Needs To Be Resolved By This Court.

The New York Court of Appeals in *People v. Spencer*, 84 N.Y.2d 749, 622 N.Y.S.2d 483 (1995), held that absent an extreme and imminent threat to public safety, the police may never stop an individual automobile as a means of securing information from its non-suspect occupants concerning criminal activity, no matter how vital, evanescently valuable and otherwise unavailable their information may be. In so holding, New York's highest court ruled on an important issue of federal law which this Court has not yet decided. This Court should grant the petition for a writ of *certiorari* because the police regularly must confront this investigative decision of whether, and under what circumstances, they may stop a non-suspect's automobile; because the New York Court of Appeals' ruling unreasonably prohibits the police from using a minimally intrusive and common sense technique for gathering vital information, irrespective of all but the most immediate and dire consequences; because federal law is negligible and state law unclear on this issue; and because the New York

Court of Appeals' ruling provides poor precedent for other jurisdictions to consider. *See* Sup. Ct. R. 10.1(b) & (c).

1. There Is Little Guidance For The Police Or The Judiciary On This Issue.

Beginning with *Terry v. Ohio*, 392 U.S. 1 (1968), this Court has defined and explained various settings in which the police may stop citizens for investigative purposes, on less than probable cause. Many of these cases have dealt with automobile stops, which constitute limited seizures under the fourth amendment. *See Colorado v. Bannister*, 449 U.S. 1, 4 n.3 (1980) (automobile stop constitutes a seizure within the meaning of the fourth amendment); *Delaware v. Prouse*, 440 U.S. 648, 653-56, 662-63 (1979) (automobile stop evaluated in manner similar to pedestrian stop); *see also Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 447 (1990) (automobile stop at sobriety checkpoints); *United States v. Hensley*, 469 U.S. 221, 228 (1985) (automobile stop to investigate past crime based on wanted flyer); *United States v. Brignoni-Ponce*, 422 U.S. 873, 883 (1975) (automobile stop based on reasonable suspicion that it contained illegal aliens). In determining whether a particular car stop is lawful, a court must decide whether the stop was reasonable. *Florida v. Jimenez*, 500 U.S. 248, 250 (1991). This, in turn, requires a court to balance the governmental interest in making the inquiry, against the individual's interest in being free from intrusion. *Delaware v. Prouse*, 440 U.S. at 654. But while there is a substantial body of caselaw to guide the judiciary and law enforcement concerning automobile stops of persons suspected of crimes, there is virtually no guidance concerning stops of automobiles containing potential witnesses or persons who could provide valuable investigative information. *See Metcalf v. Long*, 615 F. Supp. 1108, 1114 n.5 (D. Del. 1985) ("[l]ittle authority exists on the issue of what level of suspicion

is necessary to stop and question potential witnesses about a crime"); Wayne R. Lafave, 3 *Search and Seizure* § 9.2(b) (2d ed. 1987).

Moreover, the caselaw that does exist provides few consistent analytical guidelines and demonstrates deep divisions of opinion among the judges who have considered the issue. In *United States v. Ward*, 488 F.2d 162, 168 (9th Cir. 1973) (en banc), the lone United States Court of Appeals case on the subject -- in which the *en banc* court reversed the initial panel's decision -- FBI agents had used their car's siren to pull over an automobile in order to make a general inquiry about a federal fugitive. The agents knew the driver, Ward, and knew where he lived and worked, but they had made no previous attempt during the several months long investigation to arrange an interview with him at either location. *Id.* at 167. Believing that Ward would be reluctant to speak with them, they had, instead, followed Ward on several prior occasions, unsuccessfully looking for an opportunity to speak with him in secret. *Id.* at 163-64, 167-68.

The court held that the stop, which resulted in Ward's arrest for production of a false draft card, was unreasonable. Although the court noted several factors that contributed to its decision, the primary reason was that Ward, himself, was not a suspect. *Id.* at 169-70. As Professor LaFave observed, the language of the opinion could support the conclusion that mere witnesses may never be stopped, or simply that emergency circumstances are required to justify such a stop. Wayne R. Lafave, 3 *Search and Seizure* § 9.2(b), at 355 (2d ed. 1987).

By contrast, in *Metcalf*, the federal district court found that a car stop was reasonable where there was reason to believe that the driver would know the whereabouts of a fugitive who had escaped three days earlier and where there was a possibility

that the driver might be harboring the fugitive inside the car. 615 F. Supp. at 1115. The court held, moreover, that even after the fugitive was not found to be inside the car, the police were justified in continuing the seizure to inquire if Metcalf knew where the fugitive was. *Id.* at 1111-12, 1115-16.

In *Williamson v. United States*, 607 A.2d 471, 472, 477-78 (D.C. App. 1992), *cert. denied*, 114 S.Ct. 96 (1993), the three-judge panel was divided over the reasonableness of an automobile stop where the police officer had heard gunshots, saw a car speed away from the location, believed that the occupants of that car had fired the shots, but then stopped a second car leaving the area. The officer did not suspect the occupants of this second car, in which a handgun was later found, of being the shooters, but thought that it was possible that they were either witnesses, suspects or victims of the shooting. *Id.* Each of the judges in the majority wrote separately on the justification for the stop, agreeing that it was reasonable, but disagreeing on why it was reasonable. The dissent argued that a potential witness could never be stopped absent reasonable suspicion to believe that the witness was also a perpetrator. *Id.* at 481-82.

Other state courts have considered the issue of when potential witnesses may be stopped, but this has not resulted in any consistent guidelines. *See, e.g., Blevins v. State*, 310 Ark. 538, 538-41, 837 S.W.2d 879, 880-81 (1992) (court upheld stop of car near the scene of robbery, shortly after robbery, to question potential witness); *Metzker v. State*, 797 P.2d 1219, 1220-21 (Alaska Ct. App. 1990) (court upheld stop of truck containing possible victim of recent assault, where victim had minutes earlier run away from an inquiring state trooper, flagged down the truck and rode away); *Baxter v. State*, 274 Ark. 539, 544, 547, 626 S.W.2d 935, 937-38, 939, *cert. denied*, 457 U.S. 1118 (1982) (court upheld stop of car driving

through public park into which two robbers were believed to have fled to ask if occupants had seen robbers; the dissent argued that under *Ward* this was impermissible); *State v. Shaffer*, 223 Kan. 244, 247-48, 574 P.2d 205, 208 (1977) (court upheld car stop, made soon after shooting death of a gas station employee, to question person who was former co-worker of murder victim and who was not considered a suspect); *State v. Gerrish*, 311 Or. 506, 513, 517-18, 815 P.2d 1244, 1248, 1250-51 (1991) (court upheld car stop, finding *no seizure occurred*, where officer stopped his patrol car on lone road leading from location of robbery that had occurred ten minutes earlier, left on car's turret light hoping to speak to witnesses driving away from location and only commanded car to stop after it was driven past the officer); *but see State v. Ryland*, 241 Neb. 74, 78, 486 N.W.2d 210, 213 (1992) (automobile stop violated fourth amendment where police stopped defendant's car to obtain statement about crime defendant allegedly witnessed and procuring statement was not an emergency).

In this case, the twelve judges who considered the issue of whether the stop of a non-suspect's car was reasonable expressed a number of sharply divergent views. Even the majority opinion of the New York Court of Appeals leaves unclear under what circumstances, if any, the police may stop a non-suspect's automobile. Because of this lack of coherent guidance, this Court should address this important federal constitutional question.

2. The Issue Arises Frequently And Should Be Promptly Resolved By This Court.

In this case, the police were in search of an armed violent felony suspect for a specific, recently committed crime. The suspect had been spotted in the area minutes earlier. The victim of the crime was inside the police patrol car and identified

defendant as the suspect's close friend and a person likely to know the suspect's immediate location.

The police had several choices: 1) stop defendant's car as he began to ride away to ask defendant if he knew where the suspect was -- the common sense choice from a law enforcement perspective -- and, if he did know the location of the suspect, effect the suspect's prompt arrest; or 2) attempt to obtain defendant's full name and address through a motor vehicle check and seek to interview defendant at a later time, losing an opportunity to effectuate the suspect's prompt arrest; or 3) follow defendant in his car and hope that he stopped his car at some point long enough for the officers to pull alongside and inquire about the suspect's whereabouts through the car window, diminishing the value of any information by the delay and potentially jeopardizing the victim's safety by revealing her presence in the police car; or 4) establish a roadblock surrounding the area, stopping all motorists in an attempt to gain information about the suspect with the effect of intruding on numerous civilians with no ties to the suspect; or 5) do nothing related to the information received from the victim.

Undeniably, law enforcement personnel across the nation face this type of predicament on a daily basis. A primary and essential investigative tool for law enforcement is speaking to people, whether witnesses, suspects, victims or others who can provide leads to evidence. Pedestrians and persons in their homes are routinely canvassed and, subject to their refusal to answer questions, the police may always make inquiries. Although law enforcement personnel are forbidden from stopping motorists as a routine investigative tool, the question of whether certain circumstances justify an automobile stop where the automobile contains non-suspects needs resolution. Additionally, while most car stops of citizens unsuspected of

criminal behavior do not result in arrests, and therefore never reach a court, *see* Wayne R. Lafave, 3 *Search and Seizure* § 9.2(b), at 353 (2d ed. 1987), motorists are, nevertheless, entitled to know those situations in which their right to be free of governmental intrusion while travelling on the nation's roadways might be limited by countervailing interests. These limitations, if any, should also be uniform nationwide and not subject to radical change merely by crossing a state border. Finally, those courts that have wrestled with the issue have not come up with a consistent body of law on the subject. Thus, law enforcement, the courts and the general public would all be best served by this Court's resolution of this constitutional issue.

CONCLUSION

FOR THE REASONS STATED ABOVE, THIS COURT SHOULD GRANT THE WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE NEW YORK STATE COURT OF APPEALS AND DECIDE THIS IMPORTANT CONSTITUTIONAL ISSUE.

Respectfully submitted,

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